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March 1, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Sandwich Isles Communications, Inc. Petition for Declaratory Ruling
WC Docket No. 09-133

Notice of Ex Parte

Dear Ms. Dortch:

On February 28, 2011, Sandwich Isles Communications, Inc. ("SIC") counsel Dana Frix, James Stenger and the undersigned, along with Walter Raheb of Roberts Raheb and Gradler, LLC met with Bradley Gillen, Legal Advisor to Commissioner Baker; and Zac Katz, Legal Advisor to Chairman Genachowski. Additionally, Dana Frix, Walter Raheb and the undersigned met with Angela Kronenberg, Legal Advisor to Commissioner Clyburn. These meetings addressed SIC's Reply Comments of December 21, 2010, and the attached handout, which has been redacted pursuant to the protective order in this proceeding.

On March 1, 2011, Dana Frix, Walter Raheb, and the undersigned met with Margaret McCarthy, Legal Advisor to Commissioner Copps, regarding the same subjects referenced above.

Should additional information be necessary in connection with this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

Megan E.L. Strand

Megan E.L. Strand
Counsel to Sandwich Isles Communications, Inc.

Enclosure

cc: Bradley Gillen
Zac Katz
Angela Kronenberg
Margaret McCarthy

MEETING DISCUSSION POINTS

Sandwich Isles Communications, Inc. - February 28, 2011

Sandwich Isles Communications, Inc. ("SIC") asks appropriate direction be given to the Wireline Competition Bureau and Pricing Policy Division consistent with the four points below.

FOUR PRINCIPLE POINTS

1. **Prompt Resolution to Avoid SIC Bankruptcy**

   Request: That this case be resolved promptly in order to avoid the disruption of SIC's service to the Hawaiian Homelands ("HHL").

   Background. The Order only allows SIC to include about 50% of the Paniolo lease costs in the SIC revenue requirement. This is unsustainable. The Commission has recognized that rural LECs get most of their revenue from a combination of USF high cost support plus access charges from the NECA pool. A rural LEC cannot survive with the latter component cut in half.

2. **Simple Solution/Ample Authority**

   Request: Correcting the Order on reconsideration is simple because there is ample authority allowing SIC to include 100% of the Paniolo lease costs in its revenue requirement. This does not mean that 100% of the costs will be paid by NECA. The revenue requirement is subject to the normal cost separation rules.

3. **First Legal Issue in This Case – Spare Fiber Guidelines (SFG)**

   Request: SIC is asking the Bureau to direct NECA to apply the SFG to SIC just as NECA applies the SFG to all other carriers, and not to discriminate against SIC.

   Background: After the Order was issued, SIC discovered that NECA has SFG. The Bureau has advised SIC that the Bureau did not consider the SFG when crafting the Order. Under the SFG (which cite the FCC's *Separations Reform Order*) it is normal for a carrier to have one-third in-use and two-thirds spare fiber. [redacted]. So directing NECA to apply the SFG means directing NECA to allow SIC to include 100% of the Paniolo lease costs in its revenue requirement based upon the uncontroverted evidence [redacted].

4. **Second Legal Issue in this Case – Used and Useful**

   Request: First, SIC asks that the Bureau correct its statement that only a small amount of Paniolo fiber is in-use. [redacted], which is at or above industry norm. As a result, the Bureau should find that Paniolo is in fact currently "used and useful." Second, the Bureau should explicitly recognize that spare fiber is fiber that is deemed in-use. This is the very foundation for the SFG. Third, the Bureau relied on certain used and useful cases. The Bureau should hold that those cases justify putting

100% of the Paniolo lease costs in SIC's revenue requirement. Particularly in light of the SFG.

Background. Rather than applying the SFG, NECA posed an overly general question to the Bureau: How should NECA evaluate the Paniolo lease costs under the used and useful standard? First, the "used and useful" question cannot be looked at without reference to the SFG discussed above. The SFG represent industry standards and practices, and therefore represent industry interpretation of the used and useful requirement. If spare fiber was not used and useful, the SFG would not exist. Second, the FCC cases discussed in the Order are consistent with including 100% of the Paniolo lease costs in SIC's revenue requirement, and in fact they are inconsistent with a 50% reduction. Three key cases are:

- ***PSV Cable Cases*****:** The first PSV Cable case found that 100% of the cost of the cable was recoverable as it was still being used in part. The second PSV Cable case, which is cited in the Order, is not applicable because it was based on the PSV cable being taken out of service. Paniolo is in service; it is not an obsolete or retired facility.

- ***Comsat*****:** The *Comsat* case held that 100% of the cost of in-orbit and on-ground spare satellite capacity was entitled to be included in Comsat's revenue requirement. It did not limit Comsat to 50% of spare satellite costs.

- ***Separations Reform Order*****:** As noted above, the *Separations Reform Order* found that two-thirds of all fiber is spare, and importantly, the Commission did not find this unreasonable or suggest that the associated costs should be cut by 50%.

The bottom line is that the Bureau has all it needs to reconsider the Order and allow SIC to recover its spare fiber costs just as other carriers do.

ADDITIONAL SPARE FIBER GUIDELINES BACKGROUND

Simply Directing NECA to Apply its Spare Fiber Guidelines to SIC Will Resolve This Case

- In this proceeding NECA argued/implied that SIC should not be compensated for the costs of Paniolo because Paniolo has too much spare fiber. In short, NECA sought to characterize SIC as an outlier in the amount of spare fiber it deployed.

- Not having been briefed by NECA of the existence of the SFG, the Order assumed this to be true, and therefore allowed SIC to place only about 50% of its Paniolo costs in its NECA "revenue requirement."

- The record shows that when Paniolo was put into service it had about the same absolute amount of spare fiber as is average for LECs around the country. And, on a cost-basis, Paniolo has almost no spare fiber. (98% of Paniolo's costs are in the first 12 fibers and [redacted].)

- NECA's SFG were not known by the Bureau (or counsel for SIC) until after the Order was issued. The SFG note that most fiber is spare and therefore spare fiber is to be included in a carrier's "revenue requirement."

- Applying the SFG to SIC is all SIC requests in this case. Not applying NECA's SFG to SIC discriminates against SIC (and the HHL).

- The Bureau thought it was deciding the question of how to deal with spare fiber in a vacuum. In such a vacuum the Bureau concluded that 50% recovery was about right.

- During this proceeding SIC advised the Bureau that it was SIC's understanding that NECA was applying a different legal standard to SIC than to all other LECs, but the Order concluded that SIC had failed to substantiate that point. That point is now substantiated – by NECA's own SFG.

ADDITIONAL USED AND USEFUL BACKGROUND

Granting SIC Recovery is Consistent with and Will Not Undermine the Used and Useful Standard

- The SIC Order, at para. 12, inadvertently found that "the record reveals only a very small portion of the capacity leased on [Paniolo] currently is in use by [SIC]…." This should be corrected to reflect that the usage is normal. The relief requested by SIC is consistent with, and will not undermine, the used and useful standard for several reasons:

- The Paniolo cable is being used. [redacted]. On a fiber strand basis, this is the same percentage as the in-use fibers reported to the Commission by carriers that operate 95% of all the access lines in the country (per the *Separations Reform Order*).

- Spare fiber is used and useful according to all applicable industry standards and practices. In a report championed by NECA, the Association of Communications Engineers recognized that all fiber installations include spare fiber because the useful life of fiber is 20 years and it does not make economic sense to add fiber on an incremental basis. This is the very basis behind the SFG.

- SIC is not asking for any changes to the used and useful doctrine or special treatment. As shown above, SIC uses the same proportion of fiber as other carriers and SIC's costs will be subject to the normal cost separation rules.

- Although the Pricing Division presumably desires to preserve and protect the used and useful principle, the Bureau also must come up with rules and decisions that accountants can apply. At the end of the day, cost studies are prepared and submitted to NECA by accountants. The Order discusses many amorphous "equitable factors." Accountants cannot apply "equitable factors." The SFG were developed by NECA to provide accountants with a simple and direct approach that they can apply, and that is why the Bureau should direct NECA to apply the SFG to SIC.